GOVERNMENT OF MYSORE.

Legislative Department.

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NOTIFICATION.

No. L.D. 2309—Legis. 3-51-49, dated Bangalore, 8th March 1952.

Ordered that the Employees' Provident Funds Bill, 1952 (Central Bill No. 15 of 1952) published in the *Gazette of India*, Part II, Section 2, dated the 23rd February 1952, be republished in the *Mysore Gazette*, for general information.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,
Legal Remembrancer and Secretary to Government, Law Department.

BILL* NO. 15 OF 1952.

A Bill to provide for the institution of provident funds for employees in factories and other establishments.

BE it enacted by Parliament as follows :—

1. Short title, extent and application.—(1) This Act may be called the Employees' Provident Funds Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) Subject to the provisions contained in section 16, it applies in the first instance to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed, but the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to all factories employing such number of persons less than fifty as may be specified in the notification and engaged in any such industry.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "appropriate Government" means—

(i) in relation to a factory engaged in a controlled industry or in an industry connected with a mine or an oilfield, the Central Government, and

(ii) in relation to any other factory, the State Government ;

(*b*) "basic wages" means all remuneration which is earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which is paid or payable in cash to him, but does not include—

(i) the cash value of any food concession ;

*The President has, in pursuance of clause (3) of article 117 of the Constitution of India, recommended to Parliament the consideration of the Bill.

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of the employment or of work done in such employment;

(iii) any presents made by the employer;

(*c*) "contribution" means a contribution payable in respect of a member under a Scheme;

(*d*) "controlled industry" means any industry the control of which by the Union has been declared by a Central Act to be expedient in the public interest;

(*e*) "employer" in relation to a factory means the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (*f*) of sub-section (1) of section 7 of the Factories Act, 1948 (LXIII of 1948), the person so named;

(*f*) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of a factory, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the factory;

(*g*) "factory" means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power;

(*h*) "Fund" means the provident fund established under a Scheme;

(*i*) "industry" means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4;

(*j*) "member" means a member of the Fund;

(*k*) "occupier of a factory" means the person who has ultimate control over the affairs of the factory, and, where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;

(*l*) "Scheme" means a Scheme framed under this Act.

3. Power to apply Act to establishment which has a common provident fund with a factory.—Where immediately before this Act becomes applicable to a factory there is in existence a provident fund which is common to the employees employed in a factory to which this Act applies and employees in any other establishment, the Central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall also apply to that establishment, and thereupon the establishment shall be deemed to be a factory for all the purposes of this Act.

4. Power to add to Schedule I.—The Central Government may, by notification in the Official Gazette, add to Schedule I any other industsry in respect of the employees whereof it is of opinion that a provident fund sheme should be framed under this Act, and thereupon the industry so added shall be deemed to be an industry specified in Schedule I for the purposes of this Act.

5. Employees' Provident Fund Schemes.—The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the factories or class of factories to which the said Scheme shall apply.

6. Contributions and matters which may be provided for in Schemes.—(1) The contribution which shall be paid by the employer to the Fund shall be six and a

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quarter per cent of the basic wages and the dearness allowance for the time being payable to each of the employees, and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires and if the Scheme makes provision therefor, be an amount not exceeding eight and one-third per cent of his basic wages and dearness allowance:

Provided that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

Explanation.—For the puryoses of this sub-section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

(2) Subject to the provisions contained in sub-section (1), any Scheme may provide for all or any of the matters specified in Schedule II.

7. Modification of Scheme.—The Central Government may, by notification in the Official Gazette, add to, amend or vary any Scheme framed under this Act.

8. Mode of recovery of moneys due from employers.—Any amount due from an employer in respect of any contribution payable under this Act or towards the cost of administering the Fund payable by him under any Scheme may, if it is in arrear, be recovered by the appropriate Government in the same manner as an arrear of land revenue.

9. Fund to be recognised under Act XI of 1922.—For the purposes of the Indian Income-tax Act, 1922 (XI of 1922), the Fund shall be deemed to be a recognised provident fund within the meaning of Chapter IXA of that Act.

10. Protection against attachment.—(1) The amount standing to the credit of any member in the Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member, and neither the official assignee appointed under the Presidency-towns Insolvency Act, 1909 (III of 1909), nor any receiver appointed under the Provincial Insolvency Act, 1920 (V of 1920), shall be entitled to, or have any claim on, any such amount.

(2) Any amount standing to the credit of any member in the Fund at the time of his death and payable to his nominee under the Scheme shall, subject to any deduction authorised by the said Scheme, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or incurred by the nominee before the death of the member.

11. Priority of payment of contributions over other debts.—The amount due in respect of any contribution under this Act or under any Scheme and any charges incurred in respect of the administration of the Fund under any Scheme shall, where the liability therefor has accrued before the person liable is adjudicated insolvent, or, in the case of a company ordered to be wound up, before the date of such order, be deemed to be included among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909 (III of 1909) or under section 61 of the Provincial Insolvency Act, 1920 (V of 1920) or under section 230 of the Indian Companies Act, 1913 (VII of 1913) are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

12. Employer not to reduce wages.—No employer shall, by reason only of his liability for any contribution payable under this Act, reduce, whether directly or indirectly, the wages of any employee, or, except as provided by any Scheme, discontinue or reduce any benefit (similar to any benefit conferred by this Act or by any Scheme) towhich the employee is entitled under the terms of his employment.

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13. Inspectors.—(1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act or of any Scheme, and may define their jurisdiction.

(2) Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with this Act or with any Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of any Scheme have been complied with—

(*a*) require an employer to furnish such information as he may consider necessary in relation to the Scheme;

(*b*) at any reasonable time enter any factory or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the factory;

(*c*) examine, with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the factory or any premises connected therewith or whom the Inspector has reasonable cause to believe to be or to have been, an employee in the factory;

(*d*) make copies of, or take extracts from, any book, register or other documents maintained in relation to the factory;

(*e*) exercise such other powers as the Scheme may provide.

(3) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

14. Penalties.—(1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act or under any Scheme or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) A Scheme framed under this Act may provide that any person who contravenes, or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) No court shall take cognizance of any offence punishable under this Act or under any Scheme except on a report in writing of the facts constituting such offence made with the previous sanction of such authority as may be specified in this behalf by the Central Government, by an Inspector appointed under section 13.

15. Special provisions relating to existing provident funds.—(1) Every employee who is a subscriber to any provident fund established by the employer and in existence on the 15th day of November, 1951, shall, pending the framing of a Scheme in respect of the factory in which he is employed, continue to be entitled to the benefits accruing to him under the provident fund, and the provident fund shall continue to be maintained in the same manner and subject to the same conditions as it would have been if this Act had not been passed.

(2) On the framing of any such Scheme as is referred to in sub-section (1), the accumulations standing to the credit of the employees in the provident fund shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any deed or other instrument establishing the provident fund but subject to the provisions, if any, contained in the Scheme, be transferred to the Fund established under the Scheme, and shall be credited to the accounts of the employees entitled thereto in the Fund.

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16. Act not to apply to factories belonging to Government or local authority and also to infant factories.—This Act shall not apply to—

(*a*) any factory belonging to the Government or a local authority, and

(*b*) any other factory, established whether before or after the commencement of this Act, unless three years have elapsed from its establishment.

17. Power to exempt.—The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt from the operation of this Act, or of any scheme—

(*a*) any factory to which this Act applies if the rules of its provident fund with respect to contributions are in conformity with, or are more favourable to the employees therein than, those specified in this Act, and, if, in the opinion of the appropriate Government, the employees are otherwise in enjoyment of provident fund benefits generally which are on the whole not less favourable to the employees than the benefits provided under this Act or under any scheme in relation to employees in any factory of a similar character;

Explanation.—The following conditions shall be deemed to be always included in the conditions which may be specified in a notification under clause (*a*), namely :—

(*i*) the amount of accumulations in the provident fund shall be invested in such manner as the Central Government may direct;

(*ii*) the amount of accumulations to the credit of an employee in the provident fund shall, where he leaves his employment and obtains re-employment in another factory to which this Act applies within such time as may be specified in this behalf by the Central Government, be transferred to the credit of his account in the Fund established under the Scheme applicable to the factory;

(*b*) any class of persons employed in any factory, if the Central Government is of opinion that such class of persons is entitled to old age pension benefits which are on the whole not less favourable to such persons than the benefits provided under this Act or under any Scheme in relation to persons employed in any factory of a similar character:

Provided that no notification under clause (*b*) shall be issued unless the Central Government is satisfied that the majority of persons so employed desire to continue to be entitled to such old age pension benefits.

18. Protection for acts done in good faith.—No suit or other legal proceeding shall lie against an Inspector or any other person in respect of anything which is in good faith done or intended to be done under this Act or under any Scheme.

19. Delegation of powers to the State Government.—The Central Government may by notification in the Official Gazette, direct that any power, authority or jurisdiction exercisable by it under or in relation to any such provisions of this Act or of any Scheme as may be specified in the notification shall, subject to such conditions and restrictions as may be so specified, be exercisable also by any State Government.

20. Repeal of Ordinance VIII of 1951.—(*1*) The Employees' Provident Funds Ordinance, 1951 (VIII of 1951), is hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken.

SCHEDULE I

[*See* sections 2 (*i*) and 4] 507

Any industry engaged in the manufacture or production of any of the following, namely :—

Cement.

Cigarettes.

Electrical, mechanical or general engineering products.

Iron and steel.

Paper.

Textiles (made wholly or in part of cotton or jute or silk, whether natural or artificial).

SCHEDULE II

[*See* section 6(*2*)]

MATTERS FOR WHICH PROVISION MAY BE MADE IN A SCHEME.

1. The employees or class of employees who shall join the Fund, and the conditions under which employees may be exempted from joining the Fund or from making any contribution.

2. The time and manner in which contributions shall be made to the Fund by employers and by, or on behalf of, employees, the contributions which an employee may, if he so desires, make under sub-section (*1*) of section 6, and the manner in which such contributions may be recovered.

3. The payment by the employer of such sums of money as may be necessary to meet the cost of administering the Fund and the rate at which and the manner in which the payment shall be made.

4. The constitution of boards of trustees for the administration of Funds, each of which shall consist of—

(*a*) nominees of the Central Government ;

(*b*) nominees of such State Governments as the Central Government may, having regard to the jurisdiction of the board, specify in this behalf ;

(*c*) representatives of the employers and employees concerned, nominated by the Central Government after consultation with the employers and employees concerned or with such of their respective organisations as are representative of their interest ; provided that the number of representatives of the employees shall in no case be less than the number of representatives of the employers.

5. The number of trustees on any board, the terms and conditions subject to which they may be nominated, the time, place and procedure of meetings of the board, the appointment of officers and other employees of the board, and the opening of regional and other offices.

6. The manner in which accounts shall be kept, the investment of moneys belonging to the Fund in accordance with any directions issued or conditions specified by the Central Government, the preparation of the budget, the audit of accounts and the submission of reports to the Central Government or to any specified State Government.

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7. The conditions under which withdrawals from the Fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.

8. The fixation by the Central Government in consultation with the boards of trustees concerned of the rate of interest payable to members.

9. The form in which an employee shall furnish particulars about himself and his family whenever required.

10. The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination.

11. The registers and records to be maintained wtih respect to employees and the returns to be furnished by employers.

12. The form or design of any identity card, token or disc for the purpose of identifying any employee, and for the issue, custody and replacement thereof.

13. The fees to be levied for any of the purposes specified in this Schedule.

14. The contraventions or defaults which shall be punishable under sub-section (2) of Section 6.

15. The further powers, if any, which may be exercised by Inspectors.

16. The manner in which accumulations in any existing provident fund shall be transferred to the Fund under Section 15, and the mode of valuation of any assets which may be transferred by the employers in this behalf.

17. Any other matter which may be necessary or proper for the purpose of implementing the Scheme.

STATEMENT OF OBJECTS AND REASONS

The question of making some provision for the future of the industrial worker after he retires or for his dependents in case of his early death, has been under consideration for some years. The ideal way would have been provision through old age and survivors' pensions as has been done in the industrially advanced countries. But in the prevailling conditions in India, the institution of a pension scheme cannot be visualised in the near future. Another alternative may be for provision of gratuities after a prescribed period of service. The main defect of a gratuity scheme, however is that the amount paid to a worker or his dependents would be small, as the worker would not himself be making any contribution to the fund. Taking into account the various difficulties, financial and administrative, the most appropriate course appears to be the institution compulsorily of contributory provident funds in which both the worker and the employer would contributes. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly. The institution of a provident fund of this type would also encourage the stabilisation of a steady labour force in industrial centres.

2. The subject of legislation for institution compulsorily of contributory provident funds in industrial undertakings was discussed several times at tripartite meetings in which representatives of the Central and State Governments and of employers and workers took part. A large measure of agreement was reached that there should be such legislation. Further, a non-official Bill on this subject was introduced in the Central Legislature in 1948 and was withdrawn only on an assurance given that Government itself would soon consider the introduction of a comprehensive Bill. The view that the proposed legislation should be undertaken was lastly endorsed by the Conference of Provincial Labour Ministers held in January, 1951.

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It may be added that a statutory Contributory Provident Fund already exists for workers in coal mines, covering about 300,000 persons. This has been in operation for about five years and is working very satisfactorily.

3. The Bill provides for institution, in the first instance, of contributory provident funds in the six major organised industries named in Schedule I, except undertakings owned by the Central or a State Government or by a local authority. There is also a provision empowering the Central Government by notification, to add other industries to the Schedule or to apply the Act to industrial undertakings employing less than fifty persons.

4. To avoid any hardship to new establishments, a provision has been made for exempting them for a period of three years and similar exemptions are given to other establishments which are less than three years old till they have been in operation for a period of three years in all. The rate of contribution will be 6¼ per cent of the total emoluments of the worker, the worker and the employer each contributing these amounts. Further, the scheme could empower payment of a higher subscription by the workers at their option.

5. Where Provident Funds exist in private industry, contributions are usually a percentage of the basic wage. Unlike Government Departments, wages in private industry have not, however, been rationalised and there are very great variations in the level of basic wages in private industry, even in different units in the same industry. If contributions are reckoned on the basis of basic wage only, there will, therefore, be wide changes in the degree of benefit received. This will be unfair to the workers and may also penalise those employers who have brought the level of basic wages more in accord with current requirements. Government appreciates that dearness allowance is a variable factor depending on the cost of living. Nevertheless, for the reasons explained, Government is satisfied that contributions to the Provident Fund should be on the basis of basic pay *plus* dearness allowance. This should not be construed as in any way implying that dearness allowances on the existing rates are to be recognised as a permanent measure.

6. Most of the details relating to the Fund will be settled in accordance with a Scheme which, in the interest of uniformity, will be framed by the Central Government. The administration will, to a large extent, be decentralised in regard to undertakings falling within the sphere of State Governments.

7. Where provident funds offering equal or more advantageous terms are operating efficiently, provision has been made for them to continue subject to certain safeguards in the interest of the workers.

8. This Bill, when enacted, will repeal and re-enact an Ordinance promulgated on the same lines on the 15th November, 1951.

JAGJIVAN RAM.

NEW DELHI;
The 11th February, 1952.